

DECISION

26687
**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D. C. 20548

FILE: B-212330**DATE:** November 4, 1983**MATTER OF:** Edcar Industries, Inc.**DIGEST:**

Where two possible meanings can be reached from the language of a bid, the contracting officer's reasonable interpretation will prevail and the bidder may not explain its meaning after bid opening when it is in a position to prejudice other bidders.

Edcar Industries, Inc. protests the award of a contract to Lite Industries, Inc. by the Defense Logistics Agency (DLA) under invitation for bids (IFB) No. DLA100-83-B-0609 which invited bids [from small business firms] for 192,810 coveralls to be delivered to six different destinations. Edcar contends that its bid, as amended by a telegram received by the agency prior to bid opening, was low for a portion of the requirements and that the agency's interpretation of that telegram was erroneous, arbitrary and capricious.

The protest is denied.

Of the eight firms which submitted bids, Lite's price of \$12.59 each for the total quantity was the lowest. Lite's bid specified a minimum award limitation of 50 percent of the total quantity.

Edcar's initial bid prices were:

<u>Destination</u>	<u>Quantity</u>	<u>Unit Price</u>	<u>Total</u>
Memphis	12,060	\$22.45	\$ 270,747.00
Norfolk	33,760	22.45	757,687.50
Oakland	23,490	22.63	531,578.70
Richmond	76,020	22.45	1,706,649.00
San Diego	4,800	22.63	108,624.00
Tracy	42,690	22.63	966,074.70
			<u>\$4,341,360.90</u>

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Edcar's bid was submitted on the basis of "100% of all items or none" with a 1 percent discount for payment within 20 calendar days.

Prior to bid opening, Edcar sent a telegraphic amendment which stated:

"CHANGE OUR QUANTITY LIMITATIONS FROM 100 PERCENT OF ALL ITEMS OR NONE TO THE FOLLOWING LIMITATIONS APPLICABLE TO SEPARATE ITEMS AS FOLLOWS:

- 1 - FOR NORFOLK NSC AND RICHMOND GSC DESTINATIONS REDUCE OUR PRICE BY \$9.95 (NINE DOLLARS AND NINETY-FIVE CENTS) PER UNIT.
- 2 - FOR MEMPHIS DD DESTINATION REDUCE OUR PRICE BY \$9.17 (NINE DOLLARS AND SEVENTEEN CENTS) PER UNIT.
- 3 - FOR OAKLAND NSC, SAN DIEGO NSC, AND TRACY DD REDUCE OUR PRICE BY \$9.35 (NINE DOLLARS AND THIRTY-FIVE CENTS) PER UNIT.
- 4 - IF AWARDED ALL DESTINATIONS REDUCE ALL THE ABOVE PRICES BY \$0.20 (TWENTY CENTS) PER UNIT. DISCOUNT FOR PROMPT PAYMENT IS ONE-TENTH OF ONE PERCENT AT 10 DAYS, ONE-TWENTIETH OF ONE PERCENT AT 20 DAYS AND NET 30 DAYS.

ALL OTHER TERMS AND CONDITIONS REMAIN THE SAME. CONSIDER THIS AN OFFICIAL PART OF OUR BID."

Thus, Edcar's revised prices were \$12.50 each for the coveralls to be shipped to Norfolk and Richmond, \$13.28 for those going to Memphis and also \$13.28 for those going to Oakland, San Diego and Tracy. These revised prices would be further reduced by 20 cents if Edcar was awarded a contract for the entire quantity. With the additional 20 cent reduction included in the unit prices, Edcar's bid for the total quantity was \$2,436,334.20 while Lite's price for the total was \$8,856.30 lower at \$2,427,477.90.

DLA interpreted the telegram as reflecting an intention to change from the all-or-none limitation in the initial bid to the limitations applicable to separate

items set out in Edcar's telegram and that the agency would have to award Edcar a minimum of the total of one of the enumerated separate items, or none of such items. In other words, DLA concluded that it could not award the quantities going to Norfolk to Edcar without also awarding Edcar the quantities going to Richmond (item 1 of the telegraphic amendment). DLA reasoned that since the IFB allowed for bidding by destinations without any designation of individual item numbers the "separate items" referred to in the telegram meant the individual items in the telegram and not the destinations themselves. Thus, as interpreted by DLA, Edcar's bid for the Norfolk and Richmond requirements was \$12.58 each for the 109,770 coveralls. This was lower than any other bid, including Lite's, but award of 109,770 units to Edcar would have left less than 50 percent of the total requirements for award to Lite whose bid was contingent on its receiving no less than 50 percent. DLA could find no way of awarding the Norfolk and Richmond requirements to Edcar and the remaining units (84,040) to one or more of the other bidders, excluding Lite, without paying a total price higher than would result from a single award to Lite. Therefore, Lite was awarded a contract for the total quantity.

It is Edcar's position, however, that its telegram can reasonably be interpreted only as removing the original all-or-none limitations and reducing its unit prices for various destinations. Edcar argues that nothing in the telegram reasonably suggests that the combining of destinations for which the same reductions in unit prices are made inseparably combined those destinations for purposes of award. Edcar maintains that the reference to the "separate items as follows" was a reference to the separate destinations and not to the numbered paragraphs in the telegram; it points out that in the Abstract of Bids prepared by the agency on the day of bid opening, Edcar's telegram was recorded as only reducing the unit prices and eliminating the all-or-none limitation.

As this was a formally advertised procurement, Edcar's intentions must be determined from the bid at the time of bid opening and its post bid-opening statements as to its actual intent cannot be considered. Franklin Instruments, Co., Inc., B-204311, February 8, 1982, 82-1 CPD 105. The

choice of language used in the initial bid and the amendment was Edcar's and any uncertainty as to the meaning of such language will be construed against Edcar. Airpro Equipment, Inc., B-209612, January 31, 1983, 83-1 CPD 105. Thus, it was Edcar's responsibility to ensure that its bid was sufficiently definite to enable the contracting officer to understand it as Edcar intended and to accept it with confidence that an enforceable contract would result. See Leavitt Machine Company, B-187477, March 15, 1977, 77-1 CPD 191.

In spite of Edcar's arguments to the contrary, the amendment cannot only be interpreted as conveying an intention to eliminate all limitations and reduce unit prices for the individual destination. The telegram instructs the agency to change the all-or-none limitation to the "following limitations, applicable to separate items as follows." There were no separate items following these instructions other than the numbered paragraphs in Edcar's telegram. If we are to give effect to the use of the phrase "following limitations," we believe it is reasonable to consider these items or paragraphs as combinations of destinations for purposes of quantity limitations as well as price reductions.


Where two possible meanings can be reached from the terms of a bid, the bidder should not be allowed to explain its meaning when it is in a position to prejudice other bidders by clarifying its bid after bids have been exposed. We think the contracting officer is reasonably entitled to view Edcar's bid as he did. Rix Industries, Inc.--Reconsideration, B-184603, July 28, 1976, 76-2 CPD 87.

We also reject Edcar's allegations that the agency's doubts as to the small business status of Edcar and the anticipation of possible delays in the procurement if a size determination by the Small Business Administration became necessary, caused the agency to create a "non-existent ambiguity" in Edcar's amendment. Other than Edcar's speculations, there is no support for such a contention in the record or even that the small business status of Edcar was ever an issue in this procurement. The bids were opened on May 24 and the contracting officer was

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informed orally on May 26 of the agency's counsel's interpretation of the telegram. It was not until June 2 that the SBA Size Appeals Board rendered a determination that a company with which Edcar was affiliated was a large business. This generated some academic interest as to whether Edcar itself was therefore a small business but as Edcar was not then in line for an award, the interest had no bearing on this procurement.

The protest is denied.

for 
Comptroller General
of the United States